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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

MAIL ROOM

Computer III Further Remand :
Proceedings: Bell Operating : CC Docket No. 95-20
Company Provision of Enhanced :
Services :

1998 Biennial Regulatory Review - :
Review of Computer III and ONA : CC Docket No. 98-10
Safeguards and Requirements :

COMMENTS OF
HELICON ONLINE, L.P.

Summary of Comments

Internet service providers and other information service providers ("ISP") should be permitted to obtain unbundled network elements directly from Local Exchange Carriers ("LEC") for the sole purpose of providing a dedicated data connection between the ISP's facilities and the customer's premises. In order to provide such a data path, ISPs should be given the right to procure only those elements that they require directly from the LEC, including the right to collocate equipment in the LEC's central office.

Existing procedures are not adequate to allow smaller ISPs to obtain cost-effective access to the facilities that they require to provide high-quality, cost-effective data service to their customers. The Commission should order LECs to provide direct access to unbundled network elements directly to ISPs without requiring any further procedures.

Comments

Introduction

Helicon Online, L.P. ("Helicon") submits these Comments in response to the Further Notice of Proposed Rulemaking adopted by the Commission on January 29, 1998, in the above-captioned proceedings.

Helicon is a regional Internet service provider ("ISP"), based in New Jersey, serving approximately 13,000 customers in Western Pennsylvania and approximately 4,000 customers in Northeastern Vermont. Helicon has been in business since 1996 and is aggressively seeking to expand its service to rural and less populated areas throughout the Northeastern United States. Helicon is often the only ISP serving a community with a local connection and it takes its responsibility to those communities seriously. For example, Helicon routinely provides free Internet access to schools in the communities that it serves, as a method of bringing Internet access to those children who may not be able to afford to have such service in their homes.

Helicon is attempting to bring big-city services to rural and other less-populated areas. For example, Helicon would aggressively market digital subscriber line ("xDSL") services to its customers, if it could obtain the necessary facilities from Local Exchange Carriers ("LEC") to do so. Contrary to popular belief, these types of services do not need to be brought to market first in densely populated urban areas. While that is often the LEC's marketing plan, it has little to do with the technical ability to provide that service in other areas; rather, it is a function of LECs not wanting to be bothered with marketing and installing new services in smaller markets.

In contrast, Helicon and other similar ISPs specialize in serving those smaller markets and understand the needs of smaller communities. Rather than waiting for large, multi-state LECs to get around to providing new services in smaller communities, Helicon believes that it is essential for itself and similar regional ISPs to be able to obtain data connectivity services – a direct data pipe to the customer – directly from LECs. This will enhance the ability of Helicon to provide its customers with the level of data access that they desire. It also will have the added benefit of relieving some of the congestion on LECs' facilities that can be caused by data traffic.

Helicon understands the Commission's concerns with providing non-carriers with the right to obtain network elements directly and to collocate equipment in a LEC's central office. Consequently, Helicon would support reasonable restrictions on the types of facilities that non-carriers would be able to obtain. Helicon would emphasize that its interest is in being able to provide a direct, dedicated data connection to its customers.

By taking this action, the Commission would greatly enhance the availability of cost-effective, high-quality data services in rural areas and other smaller communities.

Response to Paragraphs 29-36: Subsequent Events May Have Alleviated the Ninth Circuit's California III Concerns

The Commission states in paragraph 33 that increased competition from Competitive Local Exchange Carriers ("CLEC") is placing pressure on LECs to provide the facilities and services that their customers desire. While this may be true in some large, urban markets, it is not the case in rural and other smaller communities. With very few exceptions, CLECs are not providing service in rural and other smaller communities. In those few instances where CLECs are attempting to serve these communities, they are not doing so with their own facilities. Instead, they are simply reselling the LEC's

facilities and services. This means, of course, that if the LEC is not providing the desired service in these smaller communities, then the CLEC would not be able to provide it either.

Moreover, it is not sufficient to rely on CLECs to provide the types of services that Helicon desires to provide to its customers. Helicon wants to provide a cost-effective, high-quality data connection directly from Helicon's facilities to the customer's premises; particularly using xDSL technology. Getting a CLEC reseller involved would create another layer of bureaucracy and additional problems in collocating Helicon's equipment in the LEC's central office. The goal is to provide a high-quality data pipe to the customer at the lowest reasonable cost. Placing a middleman between the customer and the data provider does not further this goal.

Similarly, in paragraph 36, the Commission seeks comment on whether the growth of large, information service companies is reducing the threat of access discrimination and enhancing the availability of services to consumers. Once again, while this may be happening in large, urban markets, it is not occurring in rural and other smaller communities.

To this day, many rural areas cannot obtain access to the large, national ISPs through a local telephone call. The national ISPs simply can't be bothered with extending service to smaller communities. Instead, these markets are being served by companies like Helicon that are aggressively installing facilities to provide Internet access to these communities.

National ISPs have the resources to negotiate and litigate with LECs about obtaining access to the facilities that they need. But national ISPs market their services in

much the same way as the LECs – they focus on large, urban areas where they can obtain a higher return on their marketing dollars.

Simply, relying on national ISPs, LECs, and CLECs will do nothing to bring enhanced data services to smaller communities. Companies like Helicon are in these smaller communities today and are uniquely positioned to bring enhanced data services to those communities, if it can obtain the unbundled network facilities that it needs from its LEC.

Response to paragraphs 49-51: Section 251 and Local Competition

In these paragraphs, the Commission posits that “competition in the local exchange ... market[] is the best safeguard against anti-competitive behavior.” ¶ 49.

While this may be true once there is vigorous competition in a particular market, it certainly is not true today. Indeed, as far as Helicon is aware, there is not one market in the country where there is vigorous, facilities-based competition for all consumers.

While some large, urban areas have several CLECs vying to serve large business customers, there is virtually no competition for providing services to small business and residential customers.

Moreover, in rural and smaller communities, such as those served by Helicon, there is essentially no facilities-based competition whatsoever. So, while the Commission’s vision of the future may prove to be accurate, at this point it remains just a dream. The Commission cannot rely on competition and the marketplace to ensure that LECs are not engaging in anti-competitive behavior. Rather, the Commission must act to require LECs to provide ISPs with cost-effective, nondiscriminatory access to the necessary unbundled network elements.

Response to paragraphs 80-91: ONA Unbundling Requirements

In this section, the Commission outlines the procedures that are currently in place to enable an ISP to try to obtain the facilities that it needs from a LEC. These procedures are cumbersome, time-consuming, and very expensive for an ISP to pursue. While large, national ISPs may have the staff of attorneys, engineers, and regulatory experts to undertake these types of actions against a LEC, smaller ISPs like Helicon simply do not have the capability to do so.

Helicon has not availed itself of the 120-day procedure and it is not aware of any smaller ISP that has done so. The reason is simple: cost, time, resources. It is not reasonable to expect a relatively small company to go through this type of procedure in order to obtain the network elements that it requires. Delays of months and the expenditure of tens of thousands of dollars is no way to facilitate the provision of enhanced data services in smaller communities. Indeed, on a cost per customer basis, Helicon would be spending hundreds or thousands of dollars per customer on regulatory costs in order to obtain the right to purchase the facilities that it needs to sell the customer a service (like xDSL) at a profit of a few dollars per month.

It is for this reason that Helicon is asking the Commission to require, without further proceedings, all LECs to offer unbundled network elements directly to ISPs so that ISPs can provide a direct data connection to customers. Without a specific, unconditional requirement, such service will not be available in rural areas and other smaller communities.

Response to paragraphs 92-96: Section 251 Unbundling

As Helicon already has stated, it is not sufficient for the Commission to rely on CLECs and large ISPs to ensure the provision of services when and where they are needed. For example, in paragraph 95, the Commission asks whether pure ISPs "can obtain the benefits of section 251 by becoming telecommunications carriers, or by partnering with or obtaining basic services from competitive telecommunications providers." The answer to this question is simple: no. As Helicon explained above, requiring an ISP to go through a middleman (a CLEC reseller) in order to obtain services is not a cost-effective solution. Moreover, where the CLEC does not have its own facilities, the ISP would be unable to obtain the collocation that is essential in order to offer a dedicated digital service like xDSL.

The more reasonable solution is to require LECs to sell the required network elements directly to ISPs and to allow ISPs to collocate the equipment that is necessary in order to utilize those elements.

The Commission also asks, in paragraph 96, whether full section 251 unbundling should be extended to pure ISPs. There is a difference between an ISP and a CLEC. It is reasonable to restrict the ability of an ISP to obtain unbundled network elements and to collocate facilities to those elements and facilities that are necessary to provide the dedicated data connection. ISPs should not be permitted to provide telephony services, or other switched access services, without becoming licensed as CLECs. Helicon's goal is to facilitate the transmission of data to customers and to move that data traffic off of the switched network. This is very different than becoming a CLEC and should not require the imposition on ISPs of the obligations of a CLEC (such as universal service, access


charges, and various State requirements such as 911 surcharges and annual reporting requirements).

Conclusion

Helicon is asking the Commission to take action to enhance competition in rural areas and other smaller communities. Companies like Helicon seek to provide cost-effective, high-quality data access services to the greatest number of people. That will not be possible without action from this Commission to require LECs to provide reasonably priced, unbundled access to the essential network elements, and to allow companies like Helicon to collocate equipment in the LECs' central offices.

Helicon does not seek to become a CLEC; it seeks to provide dedicated, digital facilities to its customers for the transmission of data. Helicon recognizes that there should be reasonable restrictions on the elements that it can obtain and the facilities that it can connect to those elements, so that there will remain a legitimate distinction between CLECs and ISPs.

Respectfully submitted,



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